

FAIRFAX COUNTY

PURCHASING RESOLUTION



July 7, 2003

FAIRFAX COUNTY PURCHASING RESOLUTION

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WHEREAS, a central purchasing system is authorized by §15.2-1543 of the Code of Virginia, and is thus a part of the Urban County Executive Form of Government adopted by Fairfax County in 1951; and

WHEREAS, the Board of County Supervisors is dedicated to securing high quality goods and services at reasonable cost while ensuring that all purchasing actions be conducted in a fair and impartial manner with no impropriety or appearance thereof, that all qualified vendors have access to County business and that no offeror be arbitrarily or capriciously excluded, that procurement procedures involve openness and administrative efficiency, and that the maximum feasible degree of competition is achieved; and

WHEREAS, the Code of Virginia, §2.2-4300 through §2.2-4377 (as amended), enunciate the public policies pertaining to governmental procurement from nongovernmental sources by public bodies which may or may not result in monetary consideration for either party, which sections shall be known as the Virginia Public Procurement Act; and

WHEREAS, the Code of Virginia, §15.2-1236 (as amended) requires all purchases of and contracts for supplies, materials, equipment and contractual services shall be in accordance with Chapter 43 of Title 2.2 of the Code of Virginia; and

WHEREAS, the Code of Virginia, §2.2-4343 (as amended) allows implementation of the Virginia Public Procurement Act by ordinance, resolutions, or regulations consistent with this Act by a public body empowered by law to undertake the activities described by the Act: and

WHEREAS, the Code of Virginia, §15.2-1543, empowers the Board of Supervisors to employ a County Purchasing Agent and set his duties as prescribed by the Code of Virginia, §15.2-831, §15.2-1233 through §15.2-1240, and §15.2-1543;

THEREFORE BE IT RESOLVED that this resolution prescribes the basic policies for the conduct of all purchasing in Fairfax County (except as otherwise stipulated herein) to take effect immediately upon passage, as follows:

Article 1

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GENERAL PROVISIONS

Section 1. Title.

This resolution shall be known as the Fairfax County Purchasing Resolution.

Section 2. Organization.

- a. The Department of Purchasing and Supply Management is a staff activity of the Fairfax County government, operating under the direction and supervision of the County Executive.**
- b. The Director of the Department of Purchasing and Supply Management shall be the County Purchasing Agent who shall have general supervision of the Agency. The Purchasing Agent shall be appointed by the Board of County Supervisors upon recommendation of the County Executive.**
- c. The County Purchasing Agent may also act as purchasing agent for the Northern Virginia Workforce Investment Board (NVWIB). The County Purchasing Agent shall have the authority to approve all contract awards up to \$100,000 and the NVWIB shall have the authority to approve all contract awards that exceed \$100,000.**
- d. The primary duty of the County Purchasing Agent is to carry out the principles of modern central purchasing and supply management in accordance with applicable laws and regulations and with generally accepted professional standards in such a manner as to insure the maximum efficiency of governmental operation, and to give to County taxpayers the benefit in savings that such accepted business procedures are known to produce.**

Section 3. Exceptions.

- a. The procurement of architectural, engineering and related consultant services for construction projects and the contracting for construction projects are excluded from the duties of the County Purchasing Agent for the organizations as specified below:**
 - 1. The Department of Public Works and Environmental Services, pursuant to §15.2-834 of the Code of Virginia, the Board of Supervisors' Resolution dated September 18, 1968, and this Resolution, shall be responsible for Fairfax County construction projects and related architectural, engineering and consultant services. The Director, Department of Public Works and Environmental Services, shall have the same authority as the County Purchasing Agent to execute and administer contracts and to**

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make findings and conduct proceedings as outlined in Article 3 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution.

2. The Fairfax County Public Schools shall be responsible for Fairfax County School Board capital construction and related architectural and engineering services per §22.1-79 of the Code of Virginia. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County School Board in accordance with the mandatory sections of the Code of Virginia.
 3. The Fairfax County Park Authority shall be responsible for Fairfax County Park Authority capital construction and related architectural and engineering services per §15.2-5704 of the Code of Virginia and Board of Supervisors' Resolution dated April 6, 1981, governing the relationship of the Fairfax County Park Authority and Fairfax County. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County Park Authority in accordance with the mandatory sections of the Code of Virginia.
 4. The Department of Housing and Community Development shall be responsible for capital construction and related architectural and engineering services for all programs and projects administered by the Department on behalf of either the Redevelopment and Housing Authority (per §36-19 of the Code of Virginia) or the Fairfax County Board of Supervisors, including contracts per §36-49.1:1 to carry out blight abatement. Execution of contracts under this section shall be conducted under the rules and regulations established by the Department of Housing and Community Development in accordance with the mandatory sections of the Code of Virginia.
- b. The Fairfax County Public Schools shall be responsible for the procurement of goods and services for individual schools using funds generated from school activities. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County School Board in accordance with the mandatory sections of the Code of Virginia.

Section 4. Rules and Regulations.

- a. The County Purchasing Agent shall prepare and maintain the Fairfax County Purchasing Resolution and other rules and regulations consistent with the laws of the Commonwealth of Virginia governing the operations of the County purchasing and supply management system. The Purchasing Agent shall prescribe methods and procedures for conducting transactions electronically in accordance with this Resolution.
- b. The Agencies designated in Section 3 as authorized to contract for the acquisition of architectural and engineering and related consultant services for capital construction

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projects and to contract for capital construction projects, and to contract for goods and services for individual schools using funds generated from school activities shall also prepare and maintain detailed rules and regulations on the conduct of these contracting actions. Such rules and regulations shall be consistent with this Resolution and the laws of the Commonwealth of Virginia. Such rules and regulations shall be approved by the County Executive for County staff agencies or the administrative head of the respective public body involved.

Section 5. Cooperative Procurement.

The County or any entity identified in Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

Section 6. Definitions.

- a. **Best Value**, as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.
- b. **Competitive Sealed Bidding** is a formal method of selecting the lowest responsive and responsible bidder. It includes the issuance of a written Invitation to Bid, public notice, a public bid opening and evaluation based on the requirements set forth in the invitation (See Article 2, Section 2a). Upon implementation of methods prescribed by the Purchasing Agent for conducting transactions electronically, an Invitation to Bid may be issued directly to vendors electronically, or bids in response thereto may be submitted electronically if specifically authorized in the Invitation to Bid.
- c. **Competitive Negotiation** is a formal method of selecting the top rated offeror. It includes the issuance of a written Request for Proposals, public notice, evaluation based on the criteria set forth in the Request for Proposals, and allows negotiation with the top rated offeror (See Article 2, Section 2b). Upon implementation of methods prescribed by the Purchasing Agent for conducting transactions electrically, a Request for Proposal may be issued directly to vendors electronically, or proposals in response thereto may be submitted

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electronically if specifically authorized in the Request for Proposal.

- d. **Construction** shall mean building, altering, repairing, improving or demolishing any structure, building, road, drainage, or sanitary facility, and any draining, dredging, excavation, grading or similar work upon real property.
- e. **Construction Management Contract** shall mean a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.
- f. **Design-build contract** shall mean a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.
- g. **Emergency** shall be deemed to exist when a breakdown in machinery and/or a threatened termination of essential services or a dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of essential service.
- h. **Excess Property** shall mean that property which exceeds the requirement of the Agency to which the property is assigned.
- i. **Faith-Based Organization** shall mean a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P. L. 104-193.
- j. **Firm** shall mean any individual, partnership, corporation, association, or other legal entity permitted by law to practice in the Commonwealth of Virginia; or any other individual, firm, partnership, corporation, association or other legal entity qualified to perform professional services.
- k. **Fixed Asset** shall mean a tangible item (not a component) which has an expected useful life of at least one year and a dollar value in excess of \$5,000.
- l. **Goods** shall mean all material, equipment, supplies, printing, and automated data processing hardware and software.
- m. **Immediate Family** shall mean a spouse, child, parent, brother, sister, and any other person living in the same household as the employee.
- n. **Ineligibility** shall mean an action taken to suspend or debar an individual or firm from

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consideration for award of contracts. The suspension shall not be for a period exceeding three (3) months and the debarment shall not be for a period exceeding three (3) years.

- o. Informality shall mean a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid or the Request for Proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.**
- p. Nonprofessional Services shall mean any service not specifically identified as a professional or consultant service in the definition of professional and consultant services (paragraph v).**
- q. Official Responsibility shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction or any claim resulting therefrom.**
- r. Other Authorized Agency is an Agency as designated by the Code of Virginia and the Board of Supervisors authorized to procure architectural and engineering design services to include public announcement, receipt of bids, recommending selection and award, negotiation, contract preparation and contract administration as more fully defined in Article 1, Section 3 of this Resolution.**
- s. Pecuniary Interest Arising From the Procurement shall mean a personal interest in a contract, as defined in the State and Local Government Conflict of Interests Act.**
- t. Potential Bidder or Offeror shall mean a person who, at the time the County negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.**
- u. Procurement Transaction shall mean all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.**
- v. Professional and Consultant Services shall mean any type of professional service which is either: 1) performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with this Resolution), or 2) any other type of similar**

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contractual service (including consultants), required by the Fairfax County government but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of professional service required and at fair and reasonable compensation rather than by competitive sealed bidding.

- w. **Public Body** shall mean any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this resolution.
- x. **Public Contract** shall mean an agreement between a public body and a nongovernmental source that is enforceable in a court of law.
- y. **Public or County Employee** shall mean any person employed by the County of Fairfax, including elected officials or appointed members of governing bodies.
- z. **Responsible Bidder or Offeror** shall mean an individual, company, firm, corporation, partnership or other organization who has the capability in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.
- aa. **Responsive Bidder or Offeror** shall mean an individual, company, firm, corporation, partnership or other organization who has submitted a bid which conforms in all material respects to the Invitation to Bid or Request for Proposal.
- bb. **Reverse Auctioning** shall mean a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services, but not construction or professional services, through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidder's prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.
- cc. **Services** shall mean any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
- dd. **Sheltered Workshop** shall mean a work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

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- ee. **Surplus Property** shall mean that property which exceeds the requirement of the entire County.

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Article 2

PURCHASING POLICIES

Section 1. General

- a. Unless otherwise authorized by law, all Fairfax County contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, construction, or construction management, shall be awarded after competitive sealed bidding or competitive negotiation, except as otherwise provided for in this Resolution or law.**
- b. Professional and consultant services shall be procured using competitive negotiation, except as otherwise provided for in this Article. Procurement of professional (including consultant) services (other than training) involving an individual as opposed to all other firms will require review by the Department of Human Resources, if the total expenditure equals or exceeds \$5,000, to ensure that contracts for these services will not undermine the Merit System of employment or subvert pay limitations or competitive employment procedures.**
- c. Upon a determination made in advance and set forth in writing that competitive sealed bidding is either not practical or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for the determination and shall be included in the appropriate contract file.**
- d. Construction may be procured by competitive negotiation as set forth in the Code of Virginia, subsection D of §2.2-4303 for: a) the alteration, repair, renovation or demolition of buildings, when the contract is not expected to cost more than \$500,000; b) the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.**
- e. Paper and paper products shall be procured using competitive sealed bidding. Award shall be made to the lowest responsive and responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended providing that the bid price is not more than 10 percent greater than the bid price of the lowest responsive and responsible bidder offering non-recycled paper and paper products. Recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards defined in 40 C.F.R. Part 250. This subsection became effective January 1, 1991, and shall apply to contracts awarded on or after that date.**

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- f. No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of \$30,000 or more in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive bidding. The procedure for the advertising for bids and letting of the contract shall conform, mutatis mutandis, to the Virginia Public Procurement Act.**
- g. The County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis consistent with this Resolution and law.**
- h. Certification of sufficient funds; orders and contracts in violation of Code of Virginia, §15.2-1238: - Except in emergency, no order for delivery on a contract or open market order for supplies, materials, equipment, professional and consultant services or contractual services for any County department or agency shall be awarded until the Director of Finance shall have certified that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order. Whenever any department or agency of the County government shall purchase or contract for any supplies, materials, equipment or contractual services contrary to the provisions of §15.2-1238 of the Code of Virginia or the rules and regulations made thereunder, such order or contract shall be void and of no effect. The head of such department or agency shall be personally liable for the costs of such order or contract and, if already paid for out of County funds, the amount instituted therefor.**
- i. No County construction contract entered into on or after July 1, 1991, shall waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay, in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent such delay is caused by acts or omissions of the County, its agents or employees and due to causes within their control.**

 - 1. Subsection i shall not be construed to render void any provision of a County construction contract that:**

 - (a) Allows the County to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;**
 - (b) Requires notice of any delay by the party claiming the delay;**
 - (c) Provides for liquidated damages for delay; or**
 - (d) Provides for arbitration or any other procedure designed to settle contract disputes.**

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2. A contractor making a claim against the County for costs or damages due to the alleged delaying of the contractor in the performance of its work under any County construction contract shall be liable to the County and shall pay the County for a percentage of all costs incurred by the County in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.
 3. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the County shall be equal to the percentage of the contractor's total delay claim for which the County's denial is determined through litigation or arbitration to have been made in bad faith.
- j. Notwithstanding any other provision of law, the County may, as provided in the Code of Virginia, §2.2-4327, provide by resolution that in determining the award of any contract for time deposits or investment of its funds, the treasurer or director of finance of such county may consider, in addition to the typical criteria, the investment activities of qualifying institutions that enhance the supply of, or accessibility to, affordable housing within the jurisdiction. No more than fifty percent of the funds of the county or city, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (§2.2-4400 et seq.) and all local terms and conditions for security, liquidity and rate of return.
- k. Best value concepts may be considered when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.
- l. The County may enter into contracts with faith-based organizations on the same basis as any other nongovernmental source subject to the requirements of the Virginia Public Procurement Act (VPPA) §2.2-4343.1.

Section 2. Methods of Procurement.

- a. Competitive Sealed Bidding:- is a method of contractor selection which includes the

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following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the purchase. Unless the County has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, a solicitation may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
2. Public notice of the Invitation to Bid at least five days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of county wide circulation, or both. Public notice may also be published on the Department of Purchasing and Supply Management web site and other appropriate web sites. In addition, bids may be solicited directly from potential vendors.
3. Public opening and posting of all bids received.
4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential vendors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.
5. Award to the lowest responsive and responsible bidder. Multiple awards may be made when so specified in the Invitation to Bid.
6. Competitive sealed bidding shall not be required for acquisition of professional and consultant services. Competitive negotiation will be used.

b. Competitive Negotiation.- is a method of contractor selection which includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.
2. Public notice of the Request for Proposal at least five days prior to the date set for

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receipt of proposals by posting in a designated public area or by publication in a newspaper of county wide circulation or both. Public notice may also be published on the Department of Purchasing and Supply Management web site and other appropriate web sites. In addition, proposals may be solicited directly from potential vendors.

3. Procurement of other than Professional or Consultant Services shall be as follows:

- (a) Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with the top rated offeror and a contract awarded if one can be agreed upon. If a contract cannot be negotiated with the top rated offeror, then negotiations shall be conducted with the second rated offeror and a contract awarded if one can be agreed upon, and so forth. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror.
- c. Sole Source.- Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. A written record documenting the basis for this determination shall be included in the appropriate contract file or other records of the procurement. In addition, a notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the County awards or announces its decision to award the contract, whichever occurs first. Public notice may also be published on the Department of Purchasing and Supply Management web site and other appropriate web sites.
- d. Emergency.- In case of an emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practical under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the appropriate contract or purchase order file. In addition, a notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the County awards or announces its decision to award the contract, whichever occurs first. Public notice may also be published on the Department of Purchasing and Supply Management web site and other appropriate web sites.
 - 1. If an emergency occurs during regular County business hours, the head of the using agency shall immediately notify the County Purchasing Agent who shall either purchase the required goods or services or authorize the agency head to do so.

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2. If an emergency occurs at times other than regular County business hours, the using agency head may purchase the required goods or services directly. The agency head shall, however, when practical, secure competitive oral or written bids and order delivery to be made by the lowest responsive and responsible bidder. The agency head shall also, not later than the next regular County business day thereafter, submit to the County Purchasing Agent a requisition, a tabulation of the bids received, if any, a copy of the delivery record and a brief explanation of the circumstances of the emergency.
 3. The County Purchasing Agent shall maintain a record of all emergency purchases supporting the particular basis upon which the emergency purchase was made. Such records shall be available for public inspection during regular County business hours in the office of the County Purchasing Agent.
- e. **Open Market.**- Any Fairfax County contract for the purchase or lease of goods, nonprofessional services, or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less than \$50,000 in value, shall be deemed an open market transaction and shall not be subject to the rules governing competitive sealed bidding or competitive negotiation. However, the County Purchasing Agent shall, wherever possible, solicit at least four written competitive bids on all open market transactions estimated to exceed \$10,000 in value; and solicit at least three oral or written quotes for purchase transactions estimated between \$5,000 - \$10,000. The rules and regulations adopted pursuant to Section 4 of Article 1 of this Resolution shall prescribe in detail the procedures to be observed in giving notice to prospective bidders, in tabulating and recording bids, in opening bids, in making purchases from the lowest responsive and responsible bidder, and in maintaining records of all open market transactions for public inspection.
- f. **Small Purchase.**- Any purchase or lease of goods, professional or nonprofessional services, or for the purchase of insurance, construction, or construction management, when the estimated cost thereof shall not exceed \$5,000, shall be deemed a small purchase and shall not be subject to the rules governing open market transactions. However, the County Purchasing Agent shall, wherever possible, attempt to place small purchases with vendors having an existing contract with the County or who have registered on the Commonwealth of Virginia's "eVA" central vendor registration system.
- g. **Reverse Auctioning.**- The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

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- h. **Qualifying Project.**- Any “qualifying project” as defined under the “Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA).” The PPEA provides public entities an option for either approving an unsolicited proposal from a private entity or soliciting request for proposals or invitation for bids from private entities. Such projects would be exempt from the Virginia Public Procurement Act. Prior to initiating the provisions of the PPEA, the County must develop procedures that are consistent with the principles of the PPEA and be adopted by the Board of Supervisors.

Section 3. Exceptions to the Requirement for Competitive Procurement.

- a. The County Purchasing Agent may enter into contracts without competition for the purchase of goods or services which are produced or performed by persons or in schools or workshops under the supervision of the Virginia Department for the Visually Handicapped; or which are produced or performed by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services servicing the handicapped, provided that the goods or services can be purchased within ten percent of their fair market value, will be of acceptable quality and can be produced in sufficient quantities and within the time required.
- b. The County (or any public body that has adopted this Resolution) may enter into contracts without competition for (1) legal services; (2) expert witnesses; and (3) other services associated with litigation or regulatory proceedings.
- c. The County may procure goods or personal services without competition for direct use by a recipient of County administered public assistance programs as defined by §63.1-87 of the Code of Virginia, or the fuel assistance program, or community services board as defined in §37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§16.1-309.2 et seq.) provided such good or service is delivered by a vendor upon specific instructions from the appropriate employee of the County. Contracts for the bulk procurement of goods and services for use of recipients shall not be exempted from the requirements of competitive procurement.
- d. As provided in the Code of Virginia, subdivision 13 of §2.2-4345, the County may enter into contracts without competitive sealed bidding or competitive negotiation for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles.

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- e. Upon a written determination made in advance by the County Purchasing Agent that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3b of §2.2-4301 of the Virginia Public Procurement Act.
- f. Upon a determination in writing by the County Purchasing Agent that the purchase of goods, products or commodities from a public auction sale is in the best interests of the County, such items may be purchased at the auction. The writing shall document the basis for this determination.
- g. Instructional materials and office supplies which are not stocked or purchased by the Fairfax County School Board pursuant to an existing County contract may be purchased by school principals designated by the School Board. Such purchases shall be conducted in accordance with rules and regulations adopted by the School Board pursuant to §22.1-122.1 of the Code of Virginia. With the exception of textbooks and instructional computer software that have been approved by the State Board of Education and the Fairfax County School Board, no single purchase may exceed the small purchase dollar level (as set forth in Article 2, Section 2.f.). The rules and regulations adopted by the School Board shall prescribe in detail the procedures to be observed in making purchases of instructional materials, establishing accounts for purchases, accounting for the receipt and disbursement of funds, and maintaining records of all transactions. The purchases authorized herein shall be made using funds from accounts established by the School Board solely for such purchases.

Section 4. General Purchasing Provisions.

- a. Competitive Solicitation Process.-
 - 1. The County Purchasing Agent shall solicit bids from all responsible prospective vendors who have registered their firm to be included on the Commonwealth of Virginia's "eVA" central vendor registration system for all solicitations using the competitive sealed bidding and competitive negotiation methods of procurement.

The eVA vendor registration system shall also be used to identify bidders to be solicited for open market transactions. Other potential vendors may be solicited at the discretion of the County Purchasing Agent.
 - 2. The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market transaction methods of procurement. In submitting a bid

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each bidder shall, by virtue of submitting a bid, guarantee that the bidder has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bid of such bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor shall render the entire proceedings void and shall require readvertising for bids.

3. All formal and written informal bids or proposals shall include the following provisions:
 - (a) Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
 - (b) Whenever there is reason to believe that a financial benefit of the sort described in paragraph (a) has been or will be received in connection with a bid, proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
4. Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named: it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
5. Prospective contractors may be prequalified for particular types of supplies, services, insurance, or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow potential contractors a fair opportunity to complete the process.

Any prequalification of prospective contractors for construction by the County shall

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be pursuant to a prequalification process for construction projects as outlined below.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information pursuant to Article 2, Section 4, Paragraph f.3.

In all instances in which the County requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the County shall advise in writing, each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by the County denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in Article 3, Section 1, Paragraph c.

The County may deny prequalification to any contractor only if the County finds one of the following:

- (a) The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
- (b) The contractor does not have appropriate experience to perform the construction project in question;

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- (c) The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design build or construction management;
- (d) The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the County without good cause. If the County has not contracted with a contractor in any prior construction contracts, the County may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The County may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
- (e) The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, violation of Article 6 of the Virginia Public Procurement Act (§2.2-4367 et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.), Chapter 42 (§59.1-68.6 et seq.) of Title 59, or any substantially similar law of the United States or another state;
- (f) The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
- (g) The contractor failed to provide to the County in a timely manner any information requested by the County relevant to subdivisions (a) through (f) of this subsection.

If a public body has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria, provided, however, that nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.

6. Prospective contractors may be debarred from contracting for particular types of

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goods, services, insurance, or construction, for specified periods of time. The debarment procedures are set forth under Article 3, Section 1.

7. The County shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.
8. Withdrawal of bids by a bidder.
 - (a) A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. One of the following procedures for withdrawal of a bid shall be selected by the County and stated in the advertisement for bids:
 - (1) The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
 - (2) The bidder shall submit to the public body or designated official his original work papers, documents, and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for opening of bids. The bids shall be opened one day following the time fixed by the public body for the submission of bids. Thereafter, the bidder shall have two hours after the

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opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

- (b) A bidder for a contract other than for public construction may request withdrawal of their bid under the following circumstances:
 - (1) Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Purchasing Agent in writing.
 - (2) Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
- (c) No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
- (d) If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.
- (e) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
- (f) If the County denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.
- (g) Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of Article 2, Section 4, Paragraph f.3.

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b. Selection, Negotiation and Award Process for Professional and Consultant Services.-

1. Selection Advisory Committee.

(a) When selecting a firm for professional and consultant services where the compensation for such professional services is estimated to exceed \$30,000, the Director of DPSM or Other Authorized Agency, or the Division Superintendent, Fairfax County Public Schools (FCPS), or designee shall appoint a Selection Advisory Committee (SAC) to recommend to the Director of DPSM or Other Authorized Agency, those professional services firms that are to be retained by the County. The SAC will be composed of three or more principal staff personnel and a member of the Department of Purchasing and Supply Management (DPSM) or other authorized agency. Should the contract exceed \$100,000, the Director of DPSM or Other Authorized Agency, after review of the SAC recommendation, will recommend to the County Executive, or the Division Superintendent, FCPS and the Board of Supervisors and the School Board those professional services firms that are to be retained by the County or an agency of the County.

(b) When selecting a firm for professional and consultant services, where the compensation for such professional services is estimated to be less than \$30,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of three or more principal staff personnel to recommend to the Director of the funded Agency or FCPS Department Head those professional services firms that are to be retained by the County or an agency of the County. Selection may be accomplished without public announcement; however, the Agency Director or FCPS Department Head should, whenever possible, utilize available lists and other known sources to solicit at least four potential offerors.

(c) Minutes of Selection Advisory Committee deliberations and records or votes taken shall be maintained for at least three years. Minutes shall detail pertinent reasons for committee recommendations and be available for review by the general public upon request.

2. Public Announcement and Qualifications for Architect and Engineering Services.

(a) On each occasion when these professional services are requested to be purchased, such requirement will be announced in a uniform and consistent manner. Requirements where the compensation for such professional services is estimated to be less than \$30,000 may be accomplished without public announcement, but will, whenever possible, utilize available lists and other known sources to make a selection from at least four candidates.

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(b) The County will encourage firms engaged in the lawful practice of their profession who desire to provide professional services to the County, to submit annually a Statement of Qualification and performance data, in such a manner as is prescribed by the County. An annual advertisement requesting qualifications from interested architectural or engineering firms will meet the requirements of paragraph (a) above for architectural or engineering contracts estimated to cost less than \$100,000.

(c) The County shall make a finding that the firm to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record of performance, and experience of the firm.

3. Selection, Negotiation and Approval Process.

(a) The Selection Advisory Committee for each proposed project shall evaluate current Statement of Qualifications and performance data on file with the County, together with those which may be submitted by other firms regarding the project.

(b) The Selection Advisory Committee shall select no less than two firms, if available, deemed to be the most qualified to perform the required services after considering such factors as the ability of professional personnel; past performance; ability to meet time and budget requirements; location; recent, current and projected workload of the firms; and the volume of work previously awarded by the County with the object of effecting an equitable distribution of contracts among qualified firms, provided, however, that such distribution does not violate the principle of selection of the most qualified firm and consideration of their ability to meet time requirements.

(c) DPSM or Other Authorized Agency, with the aid of the Selection Advisory Committee, shall negotiate a proposed contract with the highest qualified firm for the professional and consultant services required. The firm deemed to be the most qualified will be required to disclose its fee structure during negotiation. If a satisfactory proposed contract cannot be negotiated with the highest qualified firm, negotiations with that firm will be formally terminated. Negotiations shall then be undertaken with the second most qualified firm. Failing accord with the second most qualified firm, negotiations shall be terminated with that firm. Negotiations shall then be initiated with the third most qualified firm and so on until a satisfactory proposed contract is agreed upon.

(d) All proposed contracts for professional and consultant services, where the compensation to be paid exceeds \$100,000, shall be submitted to the Board of Supervisors and/or the School Board as an Information Item prior to final execution. Full and adequate explanation of the selection criteria and fee determination shall be

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presented with the contract in such form as required by the County Executive or the Division Superintendent, FCPS.

(e) All proposed contracts for professional and consultant services, where the compensation to be paid is less than \$100,000, shall be approved by the Director of DPSM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

(f) For all cost-plus-a-fixed-fee professional and consultant services contracts, the County shall require the firm receiving the award to execute a truth-in-negotiation certification stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional and consultant services contract under which such a certificate is required shall contain a provision that the original contract price and any addition thereto shall be adjusted to exclude any significant sums where the County determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within three years following the end of the contract.

(g) A contract for architectural or professional engineering services relating to construction projects may be negotiated by the County for multiple projects in accordance with the Virginia Public Procurement Act (VPPA), Subdivision 3a, of §2.2-4301.

(h) Multiphase professional services contracts satisfactory and advantageous to the County for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the County shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of the County require awarding the contract.

c. Selection, Evaluation and Award of Construction Management or Design-Build Contracts.-

The County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis in accordance with the Virginia Public Procurement Act (VPPA) §2.2-4308. Prior to issuing a Request for Proposal for any design-build or construction management project, the Purchasing Agent or Other Authorized

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Agency will document that a) the design-build or construction management contract is more advantageous than a competitive sealed bid construction contract, b) there is a benefit to the County by using a design-build or construction management contract, and c) competitive sealed bidding is not practical or fiscally advantageous. Such documentation, including the proposed Request for Proposal, will be presented to the Board of Supervisors or School Board, as appropriate, for approval, and upon such approval, shall be submitted to the Commonwealth of Virginia's Design-Build/Construction Management Review Board ("Review Board"). The Review Board is authorized to review and approve a public body's draft or adopted procedures governing the evaluation and award of design-build and construction management contracts. Once approved by the Review Board, the County may proceed with the design-build or construction management contracting process.

1. **Selection Advisory Committee.** The Purchasing Agent or Other Authorized Agency shall appoint a Selection Advisory Committee (SAC) which will include a licensed professional engineer or architect with professional competence appropriate to the proposed project. The licensed professional engineer or architect shall advise the County regarding the use of design-build or construction management project and will assist with the preparation of the Request for Proposal consistent with this Resolution for competitive negotiation of non-professional services, and will assist in the evaluation of proposals. The licensed professional engineer or architect services may be provided under a professional services contract by a qualified person or firm.
2. **Design Requirements.** The Request for Proposal shall include and define the criteria of the construction project in the areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; special telecommunications; and may define such other requirements as the County determines appropriate for the particular construction project.
3. **Selection, Evaluation and Award Factors.** Proposal evaluation factors and other source selection criteria shall be included in the Request for Proposal for the specific design-build or construction management project.
4. **Post-Project Review.** The County will provide post-project evaluation information, such as cost and time savings, effectiveness of the selection, evaluation and award of such contracts, and the benefit to Fairfax County, to the Design-Build/Construction Management Review Board.

d. **Contract Award Process.-**

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- 1. The County Purchasing Agent shall have the authority to waive informalities in bids, reject all bids, parts of all bids, or all bids for any one or more good or service included in a solicitation when in his judgment the public interest may be served thereby. If all bids are for the same total amount or unit price (including authorized discounts and delivery times) and if the public interest will not permit the delay of readvertisement for bids, the County Purchasing Agent is authorized to award the contract to the resident Fairfax County tie bidder whose firm has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the County Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services.**
- 2. The County Purchasing Agent shall be responsible for determining the responsibility of a bidder. In determining responsibility, the following criteria will be considered:**

 - (a) The ability, capacity and skill of the bidder to perform the contract or provide the service required;**
 - (b) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;**
 - (c) The character, integrity, reputation, judgment, experience and efficiency of the bidder;**
 - (d) The quality of performance of previous contracts or services;**
 - (e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;**
 - (f) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;**
 - (g) The quality, availability and adaptability of the goods or services to the particular use required;**
 - (h) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;**
 - (i) The number and scope of the conditions attached to the bid;**
 - (j) Whether the bidder is in arrears to the County on debt or contract or is a**

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defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and

- (k) Such other information as may be secured by the County Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of nonresponsibility, the County Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.
- 3. All contracts shall be approved as to form by the County Attorney or other qualified attorney and a copy of each long-term contract shall be filed with the chief financial officer of the County.
- 4. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the County may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiations may be undertaken only under conditions and procedures described in writing and approved by the County prior to issuance of the Invitation to Bid and summarized therein.
- 5. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Purchasing Agent. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.
- 6. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent being retained to included in the final payment. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.
- 7. Every contract awarded through competitive sealed bidding or competitive negotiation shall contain the following: During the performance of a contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is

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prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this Resolution, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

e. **Non Discrimination.-**

The County will not discriminate against a bidder or offeror because of race, color, religion, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity. In accordance with the policy of the County Small Business Enterprise Program, every effort shall be made to actively and diligently promote the procurement of facilities, supplies and services from small businesses and minority-owned businesses in all aspects of procurement to the maximum extent feasible. Every contract shall include the following provisions:

1. During the performance of this contract, the contractor agrees as follows:
 - (a) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (b) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this provision.

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- (d) The contractor will include the provisions of paragraphs (a), (b), and (c) above in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

f. **Disclosure of Information.-**

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

1. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
2. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in (3). Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
3. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to Article 2, Section 4a, paragraph 5 shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.
4. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.

g. **Bonds.-**

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1. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$100,000 shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

No forfeiture under a bid bond shall exceed the lesser of:

- (a) the difference between the bid for which the bond was written and the next low bid, or
- (b) the face amount of the bid bond.

Nothing in this section shall preclude the County from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$100,000.

2. Performance and payment bonds:

- (a) Upon the award of any (i) public construction contract exceeding \$100,000 awarded to any prime contractor or (ii) construction contract exceeding \$100,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by a public body, the contractor shall furnish to the County the following bonds:
 - (1) Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the public body.
 - (2) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

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- (b) Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.
 - (c) Such bonds shall be payable to the County of Fairfax and filed with the County or a designated office or official thereof.
 - (d) Nothing in this section shall preclude the County from requiring payment or performance bonds for construction contracts below \$100,000.
 - (e) Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.
- 3. Action on performance bond - No action against the surety on a performance bond shall be brought unless within one year after (1) completion of the contract, including the expiration of all warranties and guarantees or (2) discovery of the defect or breach of warranty, if the action be for such, in all other cases.
- 4. Actions on payment bonds:
 - (a) Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in the prosecution of the work provided in any contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
 - (b) Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed

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or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

- (c) Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
- (d) Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

5. Alternative forms of security:

- (a) In lieu of a bid, payment or performance bond a bidder may furnish a certified check or cash escrow in the face amount required for the bond.
- (b) If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

6. The County may, at the discretion of the County Purchasing Agent, require bid, payment or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

- h. Escrow Accounts.- The County, when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations, where portions of the contract price are to be retained, shall include an option in the bid or proposal for the contractor to use an Escrow account procedure for utilization of the County's retainage funds by so indicating in the space provided in the bid or proposal documents and executing the Escrow Agreement form provided by the County. In the event the contractor elects to use the Escrow account procedure, the Escrow Agreement form shall be executed and submitted to the County within fifteen days after receipt of

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notification of contract award by the contractor.

1. The executed Escrow Agreement Form shall be submitted to the Office designated in the bid or proposal documents. If the Escrow Agreement Form is not submitted to the designated office within the fifteen day period, the contractor shall forfeit his rights to the use of the Escrow account procedure.
2. The Purchasing Agent shall promulgate escrow regulations. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent and the surety shall execute the Escrow Agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth and shall satisfy escrow agent qualifications promulgated by the Purchasing Agent.
3. This subsection h. shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.
4. Any such public contract for construction with the County which includes payment of interest on retained funds, may include a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.
5. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.
6. This subsection h. became effective January 1, 1990, and shall apply to contracts awarded on or after that date as provided in the Code of Virginia, §2.2-4334.

Section 5. Compliance with Conditions on Federal Grants or Contract.

Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the policy of full and open competition, the County Purchasing Agent may comply with the federal requirements only upon written determination by the County Executive and/or Board of Supervisors that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provisions of this section in conflict with the conditions of the grant or

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contract.

Section 6. Audit by the County.

All contracts and amendments entered into by negotiation, shall include a provision permitting the County or its agent to have access to and the right to examine any books, documents, papers, and records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts.

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Article 3

BIDDER/CONTRACTOR REMEDIES

Section 1. Ineligibility.

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.**
 - 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.**
 - 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.**
- b. The County Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:**
 - 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;**
 - 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;**
 - 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;**
 - 4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:**
 - (a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or**

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- (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;
 - 5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
 - 6. The contractor has abandoned performance or been terminated for default on any other Fairfax County project;
 - 7. The contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

Section 2. Appeal of Denial of Withdrawal of Bid.

- a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4a, paragraph 8, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

Section 3. Appeal of Determination of Nonresponsibility.

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- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- b. If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

Section 4. Protest of Award or Decision to Award.

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4 f, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4 f, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.
- b. If, prior to award, it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not

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begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

Section 5. Contractual Disputes.

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within thirty (30) days. The decision of the County Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Section 6. Legal Action.

No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.

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Article 4

ETHICS IN COUNTY CONTRACTING

Section 1. General.

- a. The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§2.2-3100 et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.), and Articles 2 (§18.2-438 et seq.) and 3 (§18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
- b. No County employee having official responsibility for a procurement transaction (except as may be specifically allowed by subdivisions of A2 and A3 of §2.2-3112) shall participate in that transaction on behalf of the County when the employee knows that:
 - 1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or,
 - 2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or,
 - 3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or,
 - 4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment with a bidder, offeror or contractor.

Section 2. Solicitation or Acceptance of Gifts.

No County employee having official responsibility for a procurement transaction shall solicit, demand, accept or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The County may recover the value of anything conveyed in violation of this section.

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Section 3. Disclosure of Subsequent Employment.

No County employee or former County employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the County employee or former County employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the County unless the County employee, or former County employee, provides written notification to the County prior to commencement of employment by that bidder, offeror or contractor.

Section 4. Gifts.

No bidder, offeror, contractor or subcontractor shall confer upon any County employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

Section 5. Kickbacks.

- a. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything present or promised, unless consideration of substantially equal or greater value is exchanged.
- b. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- c. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a County contract.
- d. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.
- e. No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of the County shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, the County may permit such person to submit a bid or proposal for that procurement or any portion thereof if the County determines that the exclusion of such person would limit the number of potential

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qualified bidders or offerors in a manner contrary to the best interests of the County.

- f. The provisions of Section 5 (e) shall not affect the validity of any procurement contract entered into prior to July 1, 1997.

Section 6. Purchase of Building Materials, etc., from Architect or Engineer Prohibited.

- a. No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure; or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in §2.2-3101 of the Code of Virginia.
- b. No building materials, supplies, or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies, or equipment to be used in such building or structure to the independent contractor employed by the County to furnish architectural or engineering services in which such person has a personal interest as defined in §2.2-3101 of the Code of Virginia.
- c. The provisions of this Section shall not apply in the case of emergency.

Section 7. Certification of Compliance; Penalty for False Statements.

- a. The County may require County employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this section.
- b. Any County employee required to submit a certification as provided in subsection a. of this section who knowingly makes a false statement in such certification shall be punished as provided in §2.2-4377 of the Code of Virginia.

Section 8. Misrepresentations.

No County employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

Section 9. Penalty for Violation.

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The penalty for violations of any of the provisions under Article 4 of this Resolution is provided in the Code of Virginia, §2.2-4377.

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Article 5

SUPPLY MANAGEMENT

The Director of the Department of Purchasing and Supply Management is responsible for the management of all supplies and equipment except as excluded by formal agreement between the County and other public bodies. This includes publishing a catalog of materials used by the County, inventory management of consumable supplies, disposition of excess and surplus property and the physical accountability of fixed assets.

Section 1. Item Identification.

- a. The Director of the Department of Purchasing and Supply Management will establish and maintain a County identification numbering system for items used. The system, Fairfax County Identification Number (FCIN), will be maintained online via the County and Schools Procurement System (CASPS).
- b. The Director of the Department of Purchasing and Supply Management may establish a Committee on Standardization composed of such officials or employees of the County and other appropriate public bodies as he may designate. The members of the committee shall serve without additional compensation.
- c. The duties of the Committee shall be:
 - 1. Classification. To classify all the supplies furnished to all using agencies.
 - 2. Standardization. To adopt as standards the minimum number of quantities, sizes, and varieties of supplies consistent with the successful operation of the County government.
 - 3. Specification. To work with the Director of the Department of Purchasing and Supply Management in preparing written specifications of all such standard supplies, adopting to the maximum extent possible the standard specifications of other governmental jurisdictions and of nationally recognized standardizing bodies.
 - 4. Estimates. To study the problem of estimates of requirements in supplies and contractual services, and to recommend to the Director of the Department of Purchasing and Supply Management such rules governing estimates of needs as will best serve the interest of efficient central purchasing without adding procedures burdensome to using agencies.

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- 5. Purchasing Review. To recommend to the Director of the Department of Purchasing and Supply Management changes or improvements in the purchasing system of any kind and at any time.**
- d. The Director of the Department of Purchasing and Supply Management and the Committee are authorized to make use of the County's staff and technical facilities in the development of specifications and in the testing of supplies received under the standard specifications, and to arrange for the testing of supplies through the facilities of reputable testing laboratories.**

Section 2. Inventory Management.

- a. The Director of the Department of Purchasing and Supply Management is responsible for the following:**
 - 1. Operation of the County Consolidated Warehouse which serves as the central receiving point for supplies and equipment and provides temporary storage and distribution of the supplies and equipment to all County agencies. The Warehouse may be used as the storage point for goods on consignment from other agencies.**
 - 2. Managing the systems contract for delivery of office supplies to County agencies.**
- b. The Director of the Department of Purchasing and Supply Management shall exercise oversight responsibility over all County warehouses and storerooms and shall prescribe the procedures to be observed by using agencies in receipt, storage, issue and stock control of supplies.**

Section 3. Excess and Surplus Property.

- a. The Director of the Department of Purchasing and Supply Management is responsible for:**
 - 1. Redistribution of serviceable excess equipment.**
 - 2. Management of recyclable material contracts. These contracts involve disposal of scrap metal, paper, waste oil, scrap tires, waste silver, obsolete computers, etc.**
 - 3. Disposal of surplus County and Schools personal property through sealed bid, auction or fixed-price sale. Some equipment may also be disposed of by junking, sale as scrap metal or cannibalization. Sale of surplus personal property shall be based wherever feasible on competitive bids. If the amount of the sale is estimated to exceed \$5,000, sealed bids shall, unless the Board of Supervisors shall provide otherwise, be**

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solicited by public notice inserted at least once in a newspaper of county-wide circulation and at least five calendar days before the final date of submitting bids.

4. **Disposal of confiscated or abandoned property in the hands of the police in accordance with Chapter 2, Article 2, Sections 2-2-1 through 2-2-3 of the County Code.**
- b. **Donations of County/FCPS surplus property may be made under the following conditions:**
1. **When the fair market value exceeds \$5,000 the Board of County Supervisors or FCPS School Board, as appropriate and allowed by law, may donate surplus County or School property to charitable or non-profit organizations or public bodies where appropriate. The Director of the Department of Purchasing and Supply Management or Assistant Superintendent of Financial Services will evaluate the request for donation and determine that the requested item is surplus (i.e., it is not needed by any County or FCPS agency), and the fair market value. Other factors to be considered in the evaluation are availability of the requested item, serviceability, compatibility to the intended use, and potential benefit to the County. Public relations and good will are valid benefits. The Director of the Department of Purchasing and Supply Management or Assistant Superintendent of Financial Services will provide his evaluation and recommendation to the County Executive or Division Superintendent for forwarding to the Board of Supervisors or School Board for approval.**
 2. **When the fair market value is less than \$5,000 and not needed by any County or FCPS agency, the Director of the Department of Purchasing and Supply Management or Assistant Superintendent of Financial Services may donate surplus property directly to a charitable or nonprofit organizations or public bodies as appropriate and allowed by law.**
- c. **County employees and members of their immediate family are not eligible to buy surplus County personal property from the County, except where the property is offered to the general public on a fixed-price basis or sold through a third party.**

Section 4. Property Accountability.

- a. **The Director of the Department of Purchasing and Supply Management is responsible for:**
1. **Maintaining the County and Fairfax County Public Schools (FCPS) fixed assets accountability program.**
 2. **Conducting physical inventories, spot checks, and updating all fixed asset accounts in accordance with County procedures.**

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- 3. Completing reconciliations of the physical inventories and spot checks.**
 - 4. Providing training, management reporting and on-site customer assistance visits to County Agencies and Fairfax County Public Schools.**
- b. County agencies and Fairfax County Public Schools are to conduct periodical physical inventories of their fixed assets in accordance with the three-year cycle as well as assist the Department of Purchasing and Supply Management staff in performing annual spot checks.**
 - c. Property offered as a donation to a County Agency which exceeds a fair market value of \$5,000 may be accepted only after approval by the Director of the Department of Purchasing and Supply Management. Requests for approval must be in writing and contain an estimate of the fair market value of the property, condition of the property, and describe any future maintenance requirements. Once accepted, donated property must be labeled and reported to the Department of Purchasing and Supply Management, Property Accounts Section. The donated property will then be included in the property accountability program.**

A Copy Teste:

**Nancy Vehrs
Clerk to the Board of Supervisors**